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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-00-033-54765 Office: Vermont Service Center

Date: 24 APR 2004

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal was summarily dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is a church that seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4).

The director denied the petition on January 3, 2001. The petitioner, through counsel, timely filed a Form I-290B Notice of Appeal and indicated that a brief and/or additional evidence would be submitted within thirty days.

The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), summarily dismissed the appeal on October 11, 2001, pursuant to 8 C.F.R. 103.3(a)(3)(v), finding that a brief had never been received by the Service.

Counsel now files a motion to reconsider the appellate decision. Counsel submitted a brief and documentation addressing the original grounds for denial set forth in the January 3, 2001 decision. Counsel did not address the grounds on which the appeal was dismissed.

According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." 8 C.F.R. 103.5(a)(3).

On motion, counsel has not addressed the procedural issue, that is, the failure to timely submit a brief to support the Form I-290B. Therefore, counsel has not established that the prior decision summarily dismissing the appeal was incorrect based on the record at the time the decision was issued. Accordingly, the motion must be dismissed.

The petitioner is free to file a new petition without prejudice.

ORDER: The motion is dismissed.